

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>AEG-37595</b>											
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____	Application Number <b>10/525,627</b>		Filed <b>May 16, 2005</b>										
	First Named Inventor <b>Daniele Favaro</b>												
	Art Unit <b>1744</b>	Examiner <b>Samuel A. Waldbaum</b>											
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; vertical-align: top;">/donald j. firca, jr./</td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="vertical-align: top;">Signature <b>Donald J. Firca, Jr.</b></td></tr><tr><td style="vertical-align: top;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number <b>48140</b></td><td style="vertical-align: top;">Typed or printed name <b>216-579-1700</b></td></tr><tr><td style="vertical-align: top;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="vertical-align: top;">Telephone number <b>August 17, 2010</b></td></tr><tr><td></td><td style="vertical-align: top;">Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/donald j. firca, jr./	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Signature <b>Donald J. Firca, Jr.</b>	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <b>48140</b>	Typed or printed name <b>216-579-1700</b>	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	Telephone number <b>August 17, 2010</b>		Date
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<input checked="" type="checkbox"/> *Total of <u>2</u> forms are submitted.													

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/525,627  
Conf. No. : 9650  
Applicant(s) : Daniele Favaro et al.  
Filed : May 16, 2005  
Title : DISHWASHER, PARTICULARLY FOR FITTED KITCHENS

TC/A.U. : 1792  
Examiner : Samuel A. Waldbaum

Docket No. : AEG-37595  
Customer No.: 00116

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicants respectfully request withdrawal of the final Office action dated May 19, 2010 and allowance of the application due to clear errors in the current rejections. The three month period for reply expires August 19, 2010. Claims 1, 2 and 4-14 are pending in this application.

**Summary**

None of the cited references teaches an angled spray arm with a plane of rotation that extends beneath the plane of rotation of another spray arm. Further, the modifications made to the cited art to arrive at such a configuration are based on impermissible hindsight in view of Applicants own disclosure.

**Applicants Traverse the Rejection of Claims 1, 2 and 7-12**

Claims 1, 2 and 7-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of JP 2000107116 (“JP116”) in view of US 4,064,887 (“Geiger”) and JP 63-154150 (“JP150”). However, Applicants respectfully submit that the combination of JP116, Geiger and JP150 fails to teach, suggest or otherwise render predictable every claimed feature of the claimed invention, and one of ordinary skill would not be motivated to modify the cited references as proposed in the Office action.

The Combination Fails to Teach or Otherwise render Predictable Every Claimed Feature

Each of claims 1 and 7-10 requires, among other features, a particular arrangement of the spray arms. Generally, a first spray arm is required to be coaxially aligned with a sump through which water is to be drained from the dishwasher. A second spray arm is required to have an axis of rotation perpendicular to a sloped panel and have a plane of rotation that extends underneath that of the first spray arm. The claimed arrangement contributes directly to vertical space savings by reducing the overall height of the spray arm arrangement, allowing the claimed dishwasher to be installed in kitchens having limited under-counter space such as built-in kitchens.

JP116, the primary reference relied upon in the Office action, shows in Figures 1 and 4 a dishwasher having a second spray arm disposed above a sloped panel. However, the axis of rotation of the second spray arm in JP116 is not perpendicular to the sloped panel, and does not have a plane of rotation that extends underneath the first spray arm. In fact, the second spray arm above the sloped panel in JP116 has a plane of rotation vertically above the first spray arm, an arrangement that is the direct opposite of the claimed arrangement. Arranging the second spray arm over the sloped panel to have a plane of rotation over the first spray arm as shown in JP116 eliminates the vertical space savings achieved by the claimed invention.

The failure of JP116 to teach the second spray arm with an axis of rotation perpendicular to the sloped panel and having a plane of rotation that extends underneath the first spray arm is correctly noted in the Office action. Instead, the Office action appears to rely on both Geiger and JP150 as teaching the second spray arm having a plane of rotation that extends beneath the first spray arm as claimed. The spray arm in Geiger (fig. 12, item 40 cited on pg. 3 of the Office action), however, is a spray arm suspended from an upper rack in a dishwasher. Such an arrangement allows for vertical adjustment of the upper rack while maintaining the relationship between that upper rack and the spray arm 40 suspended there from. As can be clearly seen in Figure 1 of Geiger, however, the spray arm 40 is physically unable to have a plane of rotation that extends underneath the only other spray arm disclosed therein.

JP150, appears to disclose a second spray arm (left spray arm in Figure 4 labeled item 4) having an axis of rotation that is perpendicular to a sloped panel, but again, the second spray arm

4 in JP150 does not have a plane of rotation that extends at least partially underneath of another spray arm as claimed. The second spray arm 4 is laterally spaced from the other spray arm so there is no overlap. But even if the spray arms did overlap, the second spray arm 4 extends in an upward direction, beginning at the elevation of the other spray arm in JP150 and extending vertically upward.

Accordingly, the second spray arm above the sloped panel in JP116 has a plane of rotation over top of the first spray arm, an arrangement that is the direct opposite of the claimed arrangement. The angled spray arm in Geiger is suspended from the upper rack and separated from the other spray arm therein by another rack. Thus, it is physically impossible for the angled spray arm in Geiger to have a plane of rotation that extends at least partially underneath of the other spray arm. And the angled spray arm in JP150 is laterally spaced apart from the other spray arm, lacking any overlap with the other spray arm. But even if the spray arms in JP150 overlapped, which Applicants do not concede, JP150 still fails to teach that the angled spray arm has a plane of rotation that extends underneath the other spray arm as claimed.

In the paragraph beginning at pg. 4, line 3 of the Office action, it appears that the Examiner alleges that the spray arms of JP116 essentially rotate in the same plane since the arms have to be timed 90° apart from each other to avoid making contact with each other when rotated. The Office action then explains that, by angling the second spray arm to be parallel to the sloped panel, the plane of rotation is said to “necessarily” result in the plane of rotation of the second spray arm extending underneath that of the first spray arm. Applicants respectfully submit that this reasoning appears to rely on an allegedly-inherent teaching in the cited art to establish the spray arm arrangement claimed in the present application. However, the spray arms clearly do not rotate in essentially the same plane. The spray arm above the sloped panel rotates in a plane of rotation above that of the other spray arm. And even if the second spray arm of JP116 was angled to be parallel with the sloped panel, it still does not have a plane of rotation that extends underneath that of the first spray arm.

The timing of the spray arms in JP116 is to avoid a situation where water sprayed upward by the first spray arm is blocked, and prevented from reaching the dishes by the bottom of the second spray arm passing above the first spray arm. And regardless of the timing of the spray arms, a claim limitation such as the claimed plane of rotation can not be inherently present

simply because of the mere possibility that it could result from optimization of the prior art when such optimization is not taught. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art). JP116 fails to describe the dimensions of the dishwasher necessary to determine whether the plane of rotation of the second spray arm, even assuming for the sake of argument that the second spray arm was angled parallel to the sloped panel, would extend to, much less underneath that of the first spray arm. Thus, extension of the plane of rotation of the second spray arm underneath that of the first spray arm is not “necessarily” present even if the second spray arm is angled to be parallel to the sloped panel as set forth in the Office action.

#### Modifying the Prior Art as Proposed Would Not be Obvious to One of Ordinary Skill

The Office action explains, beginning at line 4 of pg. 3, that it would be obvious to modify JP116 to coaxially align the first spray arm therein with the sump as shown in Figure 1 of Geiger. It is further explained that “[i]t would have been obvious to one [of] ordinary [skill] in the art when the invention was made that to have placed the first spray arm above the sump pump to have provided support to the first spray arm, by moving the sump to be under the spray arm, thus allowing the spray arm with enough room to rotate.” Office action, pg. 3, lines 8-11. The Office action purports to modify JP116 to include the coaxially-aligned first spray arm and sump as shown in Geiger to: (i) provide support for the spray arm, and (ii) afford the first spray arm enough room to rotate. However, Applicants respectfully submit that the first spray arm in JP116 is already supported, and already has enough room to rotate without being modified. In other words, one of ordinary skill would not find it obvious to modify an apparatus to realize two benefits already afforded to that apparatus, namely, supporting the first spray arm and allowing the first spray arm to rotate. There is no reason to modify JP116 as proposed in the Office action other than to arrive at the claimed invention relying on impermissible hindsight based on Applicants’ own disclosure.

The Office action, beginning at pg. 3, line 14, also explains that one of ordinary skill would find it obvious to angle the second spray arm of JP116 as taught by Geiger to orient the axis of rotation perpendicular to the sloped panel at the bottom of the dishwasher. According to the Office action, doing so would be obvious to optimize cleaning of dishes while avoiding contact between the angled spray arm and the bottom of the dishwasher during operation (“because when the arm is parallel to the bottom it can not hit the bottom”). But again, the spray arm 40 shown at an angle in Figure 12 of Geiger is the upper spray arm 40 (shown clearly in Figure 1) that is suspended well above the bottom of the dishwasher from the upper rack. That spray arm 40 is also separated from the bottom of the dishwasher by a lower rack. Contact between the spray arm 40 and the bottom of the dishwasher is physically impossible, regardless of the orientation of the spray arm 40 in Geiger. Further, suspending the upper spray arm 40 from the upper rack as in Geiger allows for vertical adjustment of the upper rack in Geiger and a constant relationship between the upper rack and the upper spray arm 40. Providing the required space for vertical adjustment of the upper rack as in Geiger, however, also defeats the advantage of the claimed dishwasher of minimizing the vertical dimension of the dishwasher. Thus, one of ordinary skill would not find it obvious to angle or otherwise modify the spray arm of JP116 according to the teachings of Geiger.

Accordingly, Applicants respectfully request allowance of claims 1 and 7-10, as well as all claims depending directly or indirectly from claims 1 and 7-10.

For the reasons set forth above, applicant respectfully request withdrawal of the rejections of the claims and allowance of the application. If there are any fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. AEG-37595.

Respectfully submitted,  
PEARNE & GORDON, LLP

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Date: August 17, 2010